In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-42

JOSEPH DI NAPOLI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner claims (1) that he was the victim of an unlawful arrest, search and seizure; (2) that the item seized—$967,450 in cash— should not have been admitted against him since he was only alleged to have sold heroin valued at $21,000 to $63,000; (3) that two separate conspiracies were shown rather than the one charged; and (4) that the evidence was insufficient to support his conviction.

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on one count of conspiracy to facilitate the transportation, concealment and sale of, and to distribute, narcotics in violation of 21 U.S.C. 846; and one count of possession of two kilograms of heroin with

intent to distribute, in violation of 21 U.S.C. 841(a)(1).[1] He was sentenced to fifteen years' imprisonment on the conspiracy count, and to a consecutive sentence of five years' imprisonment and a three-year special parole term on the substantive count. The court of appeals affirmed on March 7, 1975 (Pet. App. A). A petition for rehearing with a suggestion of rehearing en banc was denied on April 28, 1975 (Pet. Apps. B and C). On May 6, 1975, Mr. Justice Marshall extended petitioner's time to file a petition for a writ of certiorari until June 27, 1975. The petition was not filed until July 8, 1975, and it is therefore out of time under Rule 22(2) of the Rules of this Court.

In any event, the petition is without merit, as shown by the thorough opinion of the court of appeals, on which we rely. Petitioner first contends that the police did not have probable cause to arrest him and search and seize a suitcase containing nearly one million dollars in cash. Carrying a suitcase in one hand, as if it were light, petitioner had entered a house which, from surveillance and other information, the police had reason to suspect was a center of narcotics activity. He was in the company of Vincent Papa, a known narcotics dealer. When he emerged—still with Papa—he was carrying the suitcase with two hands as if it were heavy. He drove off with Papa in a leased or rented automobile, although Papa was known to possess two automobiles of his own; this gave rise to an inference, based on police exper-

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[1]Numerous other individuals were tried with petitioner for various narcotics violations. Of those convicted, four others have petitioned this Court for review. See Nos. 74-6295, 74-6296, 74-6301, and 74-1491.

ience with the practices of narcotics traffickers, that the vehicle was being used to conceal its users' identity. From these and other observations, the officers had probable cause to believe that a narcotics transaction had taken place and that the suitcase contained contraband (Pet. App. 18a-26a).

Second, petitioner asserts that this evidence, ~~even~~ if not suppressed under the Fourth Amendment, was irrelevant and inflammatory. However, this enormous sum of cash was relevant evidence of participation in a large scale narcotics conspiracy because it showed special means for acquiring large amounts of narcotics, and the fruits of drug trafficking. Since only a photograph and not the cash itself was admitted into evidence, this material was not so sensational, inflammatory or prejudicial as to outweigh its relevance as proof (Pet. App. 28a-30a, 36a).

Third, petitioner claims that the evidence at best established two separate conspiracies, not the single conspiracy charged. The evidence disclosed two branches of the narcotics conspiracy, one conducted by Louis Inglese and the other by petitioner and Frank Pugliese. There was sufficient proof of mutual dependence and assistance— the same individuals working for both branches; the involvement of one of petitioner's partners, Angelo Mamone, in the Inglese operation; the knowledge of his other partner, Pugliese, of intimate details of the Inglese operation; and sales by both organizations to common distributors—to permit the jury to find that the two spheres of operation were part of one general business venture (Pet. App. 30a-32a).

Finally, petitioner asserts the evidence was insufficient to establish his partipication in the conspiracy, or his possession of narcotics with intent to distribute. As

to the conspiracy charge, petitioner received $8,000 to $10,000 from Pugliese, who was involved only in narcotics trafficking, not loan sharking as petitioner claimed; and petitioner was found in possession of nearly a million dollars in cash in a suitcase he had removed from a house connected with narcotics activities (Pet. App. 35a-37a). This was sufficient to support the conspiracy counts. As to the substantive count, there was evidence that in December 1971 a purchase of narcotics from petitioner was planned and executed, thus showing that he possessed narcotics with intent to distribute (Pet. App. 37a-38a). Pugliese told a second conspirator, Frank Dilacio[2], to pick up narcotics from petitioner and that Henry Pannirello[3] was to make deliveries. Dilacio told Pannirello that he had called petitioner and that petitioner "was going to give him a kilo" for $22,000 (Pet. App. 37a). Dilacio picked up the kilo from petitioner, and that night Pannirello obtained it from him (*ibid.*).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.

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[2]Dilacio became a fugitive prior to trial (Pet. App. 4a, n. 3).

[3]Pannirello was among five participants in the conspiracy who testified about its operations and personnel (Pet. App. 6a).